

# UNIFORM PROCEDURES FOR FORECLOSURE BY SALE MATTERS

## INSTRUCTIONS TO COMMITTEE

These instructions and guidelines have been prepared to assist you in the performance of your duties as a court appointed committee of the Superior Court. Therefore, it is the expectation of the court that you will discharge this responsibility competently and efficiently and with due regard for the interests of the parties and the court. The simplified procedure embodied in the instructions should be reflected in the quality of your work and the appropriateness of your fee.

### GENERAL RESPONSIBILITIES

Your appointment is a personal appointment. You should file a personal appearance and not a firm appearance. Your duties may not be delegated to anyone else without prior approval of the court. Absent a significant reason why you cannot personally appear to argue your own motion (for example, a health or family emergency), the court will not hear argument on your motion without your presence. Any questions regarding the need for you to appear for a motion should be directed to the foreclosure clerk at the appropriate Judicial District. The *Foreclosure by Sale Committee Report* must be filed promptly using the prescribed Judicial Branch form, JD-CV-75, if appropriate. When the committee report is filed, the committee may request the court's consideration for an order directing the plaintiff or the clerk of the court to reimburse expenses and pay fees within 30 days of the approval of sale.

The judgment may include a date after which you may begin to incur fees and expenses. However, you should file an appearance immediately to ensure receipt of future court notices and pleadings.

After filing an appearance, the Committee should contact the Plaintiff's attorney. If the Plaintiff's attorney has an appraisal of the subject property, the Committee should review it so as to be familiar with the property. The Committee should work closely with the Plaintiff's attorney, who may have extensive information regarding the property and its condition.

The Committee should go to the Superior Court and review the foreclosure file to confirm information about the file, as well as keeping abreast of subsequent pleadings (particularly bankruptcy filings which would stay the foreclosure auction procedures). The court file will also have the names and telephone numbers of the court-appointed appraiser and other information that may not have been contained in the initial notice.

The Plaintiff should have had a title search conducted at the time of initiating the foreclosure action to ensure that there are no liens or other encumbrances that were not listed on the Plaintiff's complaint. The Committee is not to incur any further expense in searching the title for the property.

If you will be unavailable on the date of the sale or are otherwise disqualified from serving, you should contact the foreclosure clerk immediately so that a new committee may be appointed in your place.

You are not authorized to alter the terms of the judgment without court approval. Questions, after consultation with counsel and the foreclosure clerk, should be submitted to the court in the form of a Motion for Advice. If a Motion for Advice would not be printed on the short calendar in time to provide timely advice, you should contact the foreclosure clerk for an expedited assignment on the write-in list.

If your duties are terminated before commencement of service, you should immediately notify the foreclosure clerk.

## APPEARANCE IN COURT

You no longer need to attend court to seek approval of a sale unless you are aware of a likely objection or are ordered by the court to do so. Generally, you need only attend court to obtain the advice of the court in limited circumstances described below. You should not attend court for argument on motions for extension or modification of a sale. Any unnecessary appearance in court will not be approved for compensation.

## LEGAL ADVERTISEMENTS

You are to place the advertisement in the newspaper in a format (style) that is directed to you by the court. The advertisement is to be published twice unless otherwise ordered by the Court.

Under special circumstances such as where the property is unique, commercial or industrial, you should consider a display advertisement. Prior approval of the court will be necessary. A cost estimate must be provided.

An affidavit of publication from the newspaper, including a copy of the advertisement, is to be attached to the Foreclosure by Sale Committee Report; therefore request an affidavit when you place the advertisement.

## APPRAISER

The court will retain a disinterested appraiser to appraise the property pursuant to Connecticut General Statute §49-25. The appraiser's report shall be made under oath and returned to the clerk of the court at least seven days prior to the sale.

## SIGN ON PREMISES (IF ORDERED)

The sign must be placed on the premises not less than 20 or more than 30 days prior to the sale. The sign shall be 3 feet wide and 2 feet high and must contain the following statement: **DO NOT REMOVE; VIOLATION SUBJECT TO PUNISHMENT BY THE COURT.** It is typical to include the case caption, the name, address and telephone number of the Committee, the date and time of the auction, and the amount and type of deposit required. When providing information to be printed on the sign, make sure the sign vendor verifies the information with you, in writing, prior to printing the sign. Cost of sign shall not exceed the amount authorized by the court, including preparation, erection, and photograph for inclusion in *Foreclosure by Sale Committee Report*. You are authorized to replace the sign once without court approval, provided the sign can be erected at least ten days prior to sale. You are authorized to hire someone to erect sign. **DO NOT ERECT SIGN YOURSELF.**

## ACCESS TO PREMISES

You should contact the persons in control of the premises (through counsel or if necessary directly) to establish the accessibility of the premises on the date of the sale.

The order permitting entry allows you to obtain access to the premises from the owners of the equity or tenants who are named as defendants. (See sample Order Permitting Entry.) However, although you may use the order to gain access if the occupants of the premises agree, it does **NOT** allow you to obtain entry to the premises without consent. Under no circumstances should the Committee force entry into the property against the will of the defendant. If the Debtor is not living at the property, the Committee should try to obtain keys to enable the Committee to inspect the property and show the property to prospective purchasers prior to the auction. If prior to, on, or after the date of sale the committee has any questions regarding obtaining access to or securing the premises, you should **IMMEDIATELY** contact the foreclosure clerk.

## **POLICE OFFICER**

You are authorized to hire a police officer when, in your discretion, it is necessary because of the character of the neighborhood, a reasonable concern for safety, or security at the sale or any other reason which you, in good faith, reasonably believe warrants a police officer. The grounds for such a decision must be stated in the committee's report to the court.

## **LOCKSMITH**

The hiring of a locksmith without prior judicial approval is authorized only when the premises is actually or apparently unoccupied. "Unoccupied" means uninhabited and unfurnished. If after entry, it is discovered that the premises is occupied, you must withdraw, relock the premises and leave a note in a conspicuous place that keys may be obtained from you. You, not the successful bidder or the plaintiff, are responsible for securing the premises after the sale. If you are uncertain of how to proceed, a Motion for Advice may be filed with the court which will be addressed on an expedited basis.

## **CONDITION OF PREMISES**

Ordinarily the foreclosing plaintiff is responsible for the condition of the premises prior to sale. If however, you learn that certain emergency conditions are likely to impact the sale materially (e.g., leaking roof or burst pipes), you should first notify the plaintiff's attorney. If not corrected in sufficient time to avoid impacting the sale, the condition should immediately be brought to the court's attention by filing a Motion for Advice which will be addressed on an expedited basis.

## **VIEWING PREMISES**

You should inspect the premises as soon after the sign is erected as practicable. Ordinarily, there should be no further need to inspect except that viewing and inspection of premises should be conducted on the morning of the sale. However, you should do your best to become familiar with the property by consulting the appraisal and reviewing the physical specifications of the building in preparation for questions that may be asked by interested parties. From this data, a fact sheet should be prepared for inquiries prior to the sale.

## **AUCTION**

For information to be given to prospective bidders, see *Foreclosure by Sale Fact Sheet - Notice to Bidders*, JD-CV-80. The committee is to keep a list of all prospective bidders who register. It is customary for the Committee to inform the bidders of the bidding and transfer of title procedures. For legal issues that may arise, it may be more appropriate for the Committee to recommend that the bidder seek advice of his or her own counsel.

When the bidding has ended, the Committee must declare the bidding over, the auction closed and the successful bidder must execute the Sales Agreement, which must be witnessed and notarized. The Committee should explain the process for the Court approval of the sale and the deadline for transfer of title. Before leaving the premises, the Committee should make sure that all individuals have left the property.

## **POST SALE PROCEDURE**

The check for deposit and the balance of the funds from the closing should be deposited with the court on the next business day or as soon as possible thereafter. The successful bidder's check should be made payable to the bidder and endorsed to the "Clerk of the Superior Court" or if made payable to another, endorsed to the "Clerk of the Superior Court." You are not authorized to make any adjustments to the deposit or the purchase price.

In order for the sale and the committee's fees to be approved in the shortest period of time, the committee is encouraged to submit the Motion for Approval of Sale by the Wednesday following the sale. All additional motions and supporting documents (including the *Foreclosure by Sale Committee Report* in the form provided) must be filed with the clerk's office no later than two weeks after the filing of the Motion for Approval of Sale. The deed must be in the form of *Foreclosure by Sale Committee Deed*, JD-CV-74. Any deviation must be approved by the court.

## **FEES AND COSTS**

Committee fees will be approved only upon the filing with the *Foreclosure by Sale Committee Report* of an appropriate motion supported by an affidavit of service performance which must contain an itemization in units of time.

For additional committee information, see the *Foreclosure by Sale Standing Orders*, JD-CV-79 and the Judicial Branch website, [www.jud.state.ct.us](http://www.jud.state.ct.us) under **Courts**, Superior Court, Standing Orders, Foreclosure by Sale Uniform Procedures.